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BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF ERIC FOGLE  
BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
DOCKET NO. 2005-57-C  
MAY 11, 2005

2005 MAY 11 PM 3:30  
SOUTH CAROLINA  
PUBLIC SERVICE COMMISSION

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH  
TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR  
BUSINESS ADDRESS.

A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc.,  
as a Director in BellSouth's Interconnection Operations Organization.  
My business address is 675 West Peachtree Street, Atlanta, Georgia  
30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR  
BACKGROUND AND EXPERIENCE.

A. I attended the University of Missouri in Columbia, where I earned a  
Master of Science in Electrical Engineering Degree in 1993 and Emory  
University in Atlanta, where I earned a Master of Business  
Administration degree in 1996. After graduation from the University of  
Missouri in Columbia, I began employment with AT&T as a Network  
Engineer, and joined BellSouth in early 1998 as a Business  
Development Analyst in the Product Commercialization Unit. From July

1 2000 through May 2003, I led the Wholesale Broadband Marketing  
2 group within BellSouth. I assumed my current position in June 2003.  
3 First, as a Business Analyst, and then as the Director of the Wholesale  
4 Broadband Marketing Group and continuing in my current position, I  
5 have been, and continue to be, actively involved in the evolution and  
6 growth of BellSouth's network including provisions for accommodating  
7 Digital Subscriber Line ("DSL") based services as well as the underlying  
8 technology.

9  
10 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

11  
12 A. The purpose of my testimony is to provide BellSouth's position on  
13 Issues 2-18 (Item 36), 2-19 (Item 37), 2-20 (Item 38), and 2-28 (Item  
14 46). These issues are summarized in the April 5, 2005 Issues Matrix  
15 filed in BellSouth's Answer to the Petition for Arbitration of NewSouth  
16 Communications Corp. ("NewSouth"), Nuvox Communications, Inc.  
17 ("NuVox"), KMC Telecom V, Inc. & KMC Telecom III LLC ("KMC"), and  
18 Xspedius Communications, LLC ("Xspedius") filed with the Public  
19 Service Commission of South Carolina ("Commission") on March 11,  
20 2005. I henceforth refer to these companies as the "Joint Petitioners."

21  
22 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

23  
24 A. Yes. There are numerous unresolved issues in this arbitration that  
25 have underlying legal arguments. Because I am not an attorney, I am

1 not offering a legal opinion on these issues. I respond to these issues  
2 purely from a policy or technical perspective. BellSouth's attorneys will  
3 address issues requiring legal argument.  
4

5 ***Item 36; Issue 2-18: (A) How should line conditioning be defined in the***  
6 ***Agreement? (B) What should BellSouth's obligations be with respect to***  
7 ***line conditioning? (Attachment 2, Section 2.12.1)***  
8

9 Q. SUBPART (A) OF ITEM 36 ASKS THE QUESTION "HOW SHOULD  
10 LINE CONDITIONING BE DEFINED IN THE AGREEMENT?" WHAT  
11 IS BELL SOUTH'S POSITION WITH RESPECT TO ITEM 36(A)?  
12

13 A. Line conditioning should be defined as a routine network modification  
14 that BellSouth regularly undertakes to provide xDSL services to its own  
15 customers. This definition is entirely consistent with the Federal  
16 Communications Commission's ("FCC's") finding in Paragraph 643 of  
17 the Triennial Review Order ("TRO"), which provides: "Line conditioning  
18 is properly seen as a routine network modification that incumbent LECs  
19 regularly perform in order to provide xDSL services to their own  
20 customers. As noted above, incumbent LECs must make the routine  
21 adjustments to unbundled loops to deliver services at parity with how  
22 incumbent LECs provision such facilities for themselves."  
23

24 BellSouth's proposed language further states that line conditioning may  
25 include the removal of any device from a copper loop or copper sub-

1 loop that may diminish the capability of the loop or sub-loop to deliver  
2 high-speed switched wireline telecommunications capability, including  
3 xDSL service. Such devices include, but are not limited to, load coils,  
4 excessive bridged taps, low pass filters, and range extenders.  
5 Consistent with the FCC's definition in the *TRO*, BellSouth has  
6 proposed this additional language because BellSouth routinely removes  
7 similar devices from its network in the process of provisioning its own  
8 DSL services, and therefore, such activities fall within the FCC's  
9 definition of a routine network modification to effect line conditioning.  
10

11 Q. CAN YOU BRIEFLY DESCRIBE BRIDGED TAPS AND LOAD COILS  
12 THAT ARE USED TO PROVIDE OR IMPROVE VOICE SERVICE, BUT  
13 WHICH CAN IMPAIR HIGH SPEED DATA SERVICES LIKE XDSL?  
14

15 A. Yes. Bridged tap is an engineering technique of extending or tapping a  
16 single loop so that it could serve additional customer locations (though  
17 the bridged loop may serve only a single one of those customer  
18 locations at a given time) and adds flexibility as service arrangements  
19 and customer needs change over time. Bridged taps create additional  
20 flexibility and increase the efficiency of the BellSouth network. Load  
21 coils and low pass filters are inductive devices that improve voice  
22 quality, especially on long loops, by reducing high frequency noise  
23 (heard by the end user as static). The same inductor that reduces high  
24 frequency noise also interferes with high frequency data signals, such  
25 as those used for xDSL service.

1 Q. DOES THE FCC SUPPORT BELLSOUTH'S POSITION?

2

3 A. In my opinion, yes. The FCC clearly defines a "routine network  
4 modification" in paragraph 632 of the *TRO*. Specifically, the *TRO* states  
5 in that paragraph: "By 'routine network modifications' we mean that  
6 incumbent LECs must perform those activities that incumbent LECs  
7 regularly undertake for their own customers." BellSouth's position and  
8 proposed language clearly state that BellSouth will perform line  
9 conditioning functions that (1) it regularly undertakes for its own xDSL  
10 customers; or (2) additional, non-FCC required line conditioning  
11 functions that it performs in limited situations pursuant to agreements  
12 with Competitive Local Exchange Carriers ("CLECs") in industry  
13 collaboratives. Thus, BellSouth's language is entirely consistent with  
14 the FCC's ruling in the *TRO* on this issue, and in some situations  
15 exceeds the FCC's requirement for line conditioning.

16

17 Q. WHY IS BELLSOUTH CONCERNED WITH THE JOINT  
18 PETITIONERS' PROPOSED LANGUAGE?

19

20 A. The Joint Petitioners' proposed language creates an obligation for  
21 BellSouth to perform specific line conditioning functions that BellSouth  
22 does not regularly undertake for its own customers. Such an obligation  
23 would lead to the development of a superior network for the Joint  
24 Petitioners and is clearly not required by the FCC's definition of line  
25 conditioning in the *TRO*. It is impossible to square the Joint Petitioners'

1 position with the FCC's findings in the *TRO*.

2

3 Q. SUBPART (B) OF THIS ISSUE ASKS THE QUESTION "WHAT  
4 SHOULD BELLSOUTH'S OBLIGATIONS BE WITH RESPECT TO  
5 LINE CONDITIONING?" WHAT IS BELLSOUTH'S POSITION ON  
6 ITEM 36 SUBPART (B)?

7

8 A. As stated above, BellSouth should perform line conditioning functions  
9 as defined in 47 C.F.R. 51.319(a)(1)(iii) to the extent the function is a  
10 routine network modification that BellSouth regularly undertakes to  
11 provide xDSL to its own customers. As stated above, the *TRO* clarifies  
12 the definition of line conditioning set forth in Rule 51.319(a)(1)(iii) by  
13 limiting its application to line conditioning "that incumbent LECs  
14 regularly perform in order to provide xDSL services to their own  
15 customers." Any line conditioning that the Joint Petitioners desire that  
16 is beyond what BellSouth is obligated to provide by the *TRO*, or has  
17 voluntarily offered to the Joint Petitioners, is available via BellSouth's  
18 Special Construction tariffs on a time and materials basis.

19

20 ***Item 37; Issue 2-19: Should the Agreement contain specific provisions***  
21 ***limiting the availability of load coil removal to copper loops of 18,000 feet***  
22 ***or less? (Attachment 2, Section 2.12.2)***

23

24 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

25

1 A. It is BellSouth's position that it will perform the same line conditioning  
2 functions for Joint Petitioners that it performs for its own customers.  
3 BellSouth adheres to current industry technical standards that require  
4 the placement of load coils on copper loops greater than 18,000 feet in  
5 length to support high quality voice service. Furthermore, BellSouth  
6 does not remove load coils for BellSouth's retail end users served by  
7 copper loops of over 18,000 feet in length. Therefore, such a  
8 modification would not constitute a routine network modification and is  
9 not required by the FCC's rules. Even though not required under the  
10 FCC's definition of line conditioning in the *TRO*, upon a Joint  
11 Petitioner's request, BellSouth will remove load coils on loops and  
12 subloops that are greater than 18,000 feet in length at rates pursuant to  
13 BellSouth's Special Construction Process contained in BellSouth's FCC  
14 Tariff No. 2.

15  
16 Q. DOES ANY FCC ORDER PROVIDE BELLSOUTH WITH A BASIS TO  
17 TREAT LINE CONDITIONING IN DIFFERENT MANNERS  
18 DEPENDING ON THE LENGTH OF THE LOOP?

19  
20 A. Yes. The *TRO* clearly states that BellSouth must perform the same line  
21 conditioning activities for CLECs as it does for its own retail customers.  
22 Therefore, BellSouth's procedures for providing line conditioning to its  
23 retail customers is the same process and the same procedures that  
24 apply to the Joint Petitioners. For its retail voice service customers,  
25 BellSouth adds or does not add load coils depending on the length of

1 the copper loop, as set forth above, and, consistent with the *TRO*,  
2 BellSouth has offered this same procedure to the Joint Petitioners.

3

4 ***Item 38; Issue 2-20: Under what rates, terms and conditions should***  
5 ***BellSouth be required to perform Line Conditioning to remove bridged***  
6 ***taps? (Attachment 2, Sections 2.12.3 & 2.12.4)***

7

8 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

9

10 A. BellSouth's offer to the Joint Petitioners exceeds its obligations under  
11 the *TRO*. Specifically, even though BellSouth does not routinely  
12 remove any bridged taps for its own xDSL customers, BellSouth agreed  
13 in the CLEC industry collaborative to remove a limited number of  
14 bridged taps at the request of CLECs. The following bridged tap  
15 removal process was developed and agreed to in the CLEC industry  
16 collaborative:

17 1) Any copper loop being ordered by a CLEC that has over 6,000  
18 feet of combined bridged tap will be modified, upon request from  
19 the CLEC, so that the loop will have a maximum of 6,000 feet of  
20 bridged tap. This modification will be performed at no additional  
21 charge to the CLEC.

22 2) Line conditioning orders that require the removal of bridged tap  
23 (serving no network design purpose) on a copper loop that will  
24 result in a combined level of bridged tap between 2,500 and  
25 6,000 feet will be performed at the rates set forth in Exhibit A of



1 Attachment 2 of the Interconnection Agreement.

2 3) The CLEC may request removal of any unnecessary and non-  
3 excessive bridged tap (bridged tap between 0 and 2,500 feet that  
4 serves no network design purpose) at rates pursuant to  
5 BellSouth's Special Construction Process contained in  
6 BellSouth's FCC Tariff No. 2.

7

8 Requests for line conditioning beyond what BellSouth performs for its  
9 own customers (which is BellSouth's only obligation) or is willing to  
10 voluntarily provide to the Joint Petitioners, are not appropriately dealt  
11 with under a Section 251 arbitration and should be addressed via a  
12 separate agreement.

13

14 Q. DO YOU BELIEVE THAT A BRIDGED TAP THAT IS LESS THAN  
15 2,500 FEET IN LENGTH SIGNIFICANTLY IMPAIRS THE PROVISION  
16 OF HIGH SPEED DATA TRANSMISSION?

17

18 A. No. The policy of not removing bridged taps less than 2,500 feet in  
19 length ("Short Bridged Taps") was established by both BellSouth and  
20 the CLECs through the industry Shared Loop Collaborative. Both  
21 BellSouth and the CLECs in this collaborative would not have agreed to  
22 such a policy if they believed that failing to remove Short Bridged Taps  
23 would impair the provision of high speed data service. And, I am not  
24 aware of any instance where a CLEC asked BellSouth to remove bridge  
25 taps of this length. Further, this joint policy is consistent with industry

1 standards for xDSL services, which allow the use of bridged taps on  
2 loops up to 6,000 feet in length. BellSouth's line conditioning policies  
3 are consistent with these standards.  
4

5 Q. DO YOU AGREE WITH THE JOINT PETITIONERS' ASSERTION  
6 THAT REMOVAL OF BRIDGED TAPS IS INCLUDED IN THE  
7 DEFINITION OF LINE CONDITIONING?  
8

9 A. No. Because BellSouth does not routinely remove bridged taps for its  
10 own xDSL customers, such activity does not fall within the FCC's *TRO*  
11 definition of line conditioning.  
12

13 ***Item 46; Issue 2-28: Should the CLECs be allowed to incorporate any***  
14 ***Commission decision that required BellSouth to provide FastAccess***  
15 ***over UNE-P? (Attachment 2, Section 3.10.4)***  
16

17 Q. WHAT IS THE PRIMARY REASON THAT THE COMMISSION  
18 SHOULD NOT GRANT THE JOINT PETITIONERS' REQUEST ON  
19 ITEM 46?  
20

21 A. On December 9, 2003, BellSouth filed an Emergency Petition with the  
22 FCC to specifically address the issue raised by the Joint Petitioners in  
23 this arbitration. That is, BellSouth's Emergency Petition asked the FCC  
24 to determine whether BellSouth should be obligated to provide its DSL  
25 or FastAccess® service to CLEC voice customers. BellSouth made

1 this request of the FCC because various other state commissions in  
2 BellSouth's region made such a finding (although each order was  
3 different in some capacity). On March 25, 2005 the FCC granted the  
4 relief requested in BellSouth's Emergency Petition.<sup>1</sup> Specifically, in  
5 response to the Emergency Petition, the FCC preempted all state  
6 rulings that required BellSouth to continue to provide its DSL services to  
7 end-user customers who have obtained voice service from a CLEC in  
8 some form or fashion. As a result, the FCC has made it clear that state  
9 commissions cannot require BellSouth to provide its DSL service to a  
10 CLEC voice customer.

11  
12 In addition, this Commission has previously decided this issue in  
13 BellSouth's favor. In the BellSouth-IDS arbitration proceeding, Docket  
14 No. 2001-19-C, this Commission ruled that:

15  
16 Clearly, the FCC has not required an incumbent  
17 LEC to provide xDSL service to a particular end  
18 user when the incumbent LEC is no longer  
19 providing voice service to that end user. IDS's  
20 contention that this practice is anticompetitive is  
21 therefore not persuasive when BellSouth is acting  
22 in accordance with the express language of the  
23 FCC's most recent Order on this subject.  
24

25 Since the Commission rendered that decision, Governor Sanford  
26 signed 2003 South Carolina Laws Act 6 (the "Broadband Act") into law.  
27 The DSL services BellSouth provides meets the definition of

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<sup>1</sup> FCC Memorandum Opinion and Order and Notice of Inquiry, released March 25, 2005 in WC Docket No. 03-251 ("Order on Emergency Petition").

1 “broadband services” set forth in the Broadband Act which expressly  
2 states that “[t]he commission must not: (1) impose any requirements  
3 related to the terms, conditions, rates, or availability of broadband  
4 service, or (2) otherwise regulate broadband service....” The General  
5 Assembly, therefore, clearly has prohibited the Commission from doing  
6 what the Joint Petitioners are asking it to do.

7  
8 Additionally, Even prior to its Order on Emergency Petition, the FCC  
9 stated on several occasions that incumbent LECs are not obligated to  
10 provide CLECs with DSL transport or DSL services over UNEs.<sup>2</sup>

11  
12 Q. SHOULD ITEM 46 (AND ALL SUBPARTS) BE INCLUDED IN THIS  
13 ARBITRATION PROCEEDING?

14  
15 A. No. FastAccess® is unregulated and wholesale DSL service is an  
16 interstate telecommunications service over which the FCC, and not this  
17 Commission, has jurisdiction. Consequently, the inclusion of Item 46 in  
18 this proceeding exceeds this Commission’s jurisdiction. Further, the

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<sup>2</sup> FCC Order No. 02-247, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Rel. May 15, 2002. (“GA/LA 271 Order”) ¶157; FCC Order No. 02-260, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, CC Docket No. 02-150, Rel. September 18, 2002. (“GA/LA 271 Order”) ¶164; and FCC Order No. 02-331, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Florida and Tennessee*, CC Docket No. 02-307, Rel. December 19, 2002. (“GA/LA 271 Order”) ¶178.

1 South Carolina Broadband Act clearly prevents this Commission from  
2 providing what the Joint Petitioners are requesting.

3  
4 Accordingly, the FCC as well as the General Assembly have all  
5 determined that this Commission does not have jurisdiction to grant the  
6 relief requested by the Joint Petitioners. For this reason, Item 46  
7 should not be addressed in a section 252 arbitration proceeding.

8  
9 Q. SUBPART (B) OF THE JOINT PETITIONERS' POSITION  
10 STATEMENT ASKS THE QUESTION "SHOULD CLEC BE ENTITLED  
11 TO INCORPORATE INTO THE AGREEMENT, FOR THE TERM OF  
12 THIS AGREEMENT, RATES, TERMS AND CONDITIONS THAT ARE  
13 NO LESS FAVORABLE IN ANY RESPECT, THAN THE RATES  
14 TERMS AND CONDITIONS THAT BELL SOUTH HAS WITH ANY  
15 THIRD PARTY THAT WOULD ENABLE CLEC TO SERVE A  
16 CUSTOMER VIA A UNE LOOP THAT MAY ALSO BE USED BY  
17 BELL SOUTH FOR THE PROVISION OF DSL SERVICES TO THE  
18 SAME CUSTOMER?" WHAT IS BELL SOUTH'S POSITION ON THE  
19 JOINT PETITIONERS' ITEM 46(B)?

20  
21 A. Item 46(b) in this arbitration does not apply in states, like South  
22 Carolina, that have not ruled that ILECs be forced to provide DSL to the  
23 CLECs' UNE voice customers in violation of federal law.

24  
25 Furthermore, in light of recent FCC rulings, the Joint Petitioners cannot

1 incorporate the rates, terms, and conditions relating to the provision of  
2 BellSouth's DSL service over leased facilities that exist in prior  
3 agreements. This is because the FCC recently interpreted Section  
4 252(i) of the Act to require CLECs to adopt another carrier's  
5 interconnection agreement in its entirety. In doing so, the FCC  
6 expressly prohibited what the Joint Petitioners are trying to do here –  
7 that is "pick and choose" certain portions of other carriers' provisions.

8

9 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

10

11 A. Yes.

12 #584987

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)  
)  
)

CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused the Direct Testimony of Eric Fogle in Docket No. 2005-57-C to be served upon the following this May 11, 2005:

Florence P. Belser, Esquire  
General Counsel  
Office of Regulatory Staff  
Post Office Box 11263  
Columbia, SC 29211  
**(U. S. Mail and Electronic Mail)**

F. David Butler, Esquire  
Senior Counsel  
S. C. Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211  
(PSC Staff)  
**(U. S. Mail and Electronic Mail)**

Jocelyn G. Boyd, Esquire  
Staff Attorney  
S. C. Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211  
(PSC Staff)  
**(U. S. Mail and Electronic Mail)**

Joseph Melchers  
Chief Counsel  
S.C. Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211  
(PSC Staff)  
**(U.S. Mail and Electronic Mail)**

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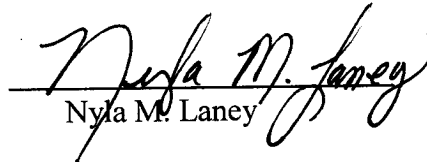
John J. Pringle, Esquire  
Ellis Lawhorne & Sims, P.A.  
Post Office Box 2285  
Columbia, South Carolina 29202  
(NewSouth, NuVox, KMC, Xspedius)  
**(U. S. Mail and Electronic Mail)**

John J. Heitmann  
Stephanie Joyce  
Garrett R. Hargrave  
KELLEY DRYE & WARREN LLP  
1200 Nineteenth Street, N.W., Suite 500  
Washington, D.C. 20036  
**(U. S. Mail and Electronic Mail)**

Bo Russell  
Regional Vice President – Regulatory and Legal Affairs SE  
2 North Main Street  
Greenville, South Carolina 29601  
(NuVox/NewSouth)  
**(U. S. Mail and Electronic Mail)**

Marva Brown Johnson  
Senior Regulatory Policy Advisor  
1755 North Brown Road  
Lawrenceville, Georgia 30043  
(KMC)  
**(U. S. Mail and Electronic Mail)**

James C. Falvey  
Senior Vice President – Regulatory Affairs  
Xspedius  
14405 Laurel Place, Suite 200  
Laurel, Maryland 20707  
(Xspedius)  
**(U. S. Mail and Electronic Mail)**

  
Nyla M. Laney